

**CITY OF MOUNTAIN VIEW
MEMORANDUM**

DATE: November 19, 2004

TO: Kevin C. Duggan, City Manager

FROM: Scott S.G. Vermeer, Police Chief

SUBJECT: POLICE CANINE TINO INCIDENT, SEPTEMBER 4, 2004

INTRODUCTION

On September 15, 2004, in a memo addressed to the Mayor, City Council and to the City Manager, I set forth a number of steps which would be taken by the Police Department to review the above-referenced incident. In addition, we placed an open letter to the community on the City's website which shared the facts that were known to date about the incident in an open and forthright manner. As promised, this memorandum will provide the community with the results of our internal administrative investigation and with information on any policy or procedure changes that we are currently considering or have undertaken. Finally, we will report on the steps remaining to complete the analysis of our program in light of this incident.

RESULTS OF THE INVESTIGATION

I assigned Michael Freeberg, our Field Operations Captain, to perform an administrative review of the incident and provide any recommendations on policy and procedure changes. Interestingly, the process allowed us to take a careful look at the history of the use of canines generally, and their use in Mountain View, specifically. The background of our canine program will be discussed further in this report.

Captain Freeberg's review of the tape recordings, police reports and discussions with the officers and supervisors involved were reported to me and I have drawn the following conclusions based on his input:

1. The initial detective on the scene who was in plainclothes did not violate department general orders during the incident.
2. The detective came upon what appeared to be a domestic disturbance between Mr. Terry and Ms. Hill. That officer was obligated to take action when it appeared he had encountered a domestic disturbance, in order to ensure the safety of the parties involved and to prevent the incident from escalating into violence. It was late in the evening (approximately 1 a.m.), Mr. Terry and Ms. Hill were arguing and appeared to be agitated toward each other. The type of action required varies, depending on the circumstances of the incident. It is concluded that the detective acted appropriately by intervening.

3. The detective appropriately called for back-up and two police units responded. One of the units was a canine unit. The canine unit was in the area as part of the undercover operation.
4. The detective drew his service weapon based on Mr. Terry's threats of violence towards police.
5. In the interview with Mr. Terry, he confirmed that he made threats of using physical force to resist an intervention. In explaining his threats, he punctuated the threats repeatedly with expletives.
6. Santa Clara County Deputy District Attorney Javier Alcala and Mountain View Special Assistant City Attorney, Lance Bayer (former Santa Clara County Deputy District Attorney) independently reviewed the detective's police report and both found the detention of Mr. Terry to be proper.
7. The detention was not based on race as alleged by Mr. Terry. An officer has an obligation to investigate a domestic disturbance.
8. The canine officer who responded to the detective's call for back-up did not violate any department general orders during this incident.
9. The canine officer did not command his canine, Tino, to exit the vehicle during this incident, nor did he give the command to apprehend Terry. The officer's canine exited the vehicle without command by moving into the front passenger compartment area and jumping out of one of the open front door windows. All doors were closed. The canine officer was not in a position to see canine Tino exit the vehicle and a canine can exit the vehicle and travel the distance required to engage the suspect in a matter of seconds.
10. There were factors that occurred during this incident which may have contributed to the canine leaving the vehicle without a command to exit. For example, the canine may have been stimulated by the activation of the police unit's lights and siren, the initial officer drawing his service weapon and running towards and yelling at Terry to get on the ground, the close proximity of Terry to the police vehicle, rapid or excited movements by the other officers, or the aggressive behavior displayed by Terry and/or Hill towards the officer.
11. The period of time, from the time the canine unit rolled onto the scene and stopped, until the bite, was a very short period of time, perhaps as little as fifteen (15) seconds. While the detective was attempting to control Mr. Terry on the ground, Ms. Hill was yelling at the officer to allow Terry to go free. This contributed to the excitement at the scene and the circumstances perceived by the canine.

12. The canine officer did not command his dog to attack Terry. The dog exited the vehicle without being commanded and immediately was controlled by the canine officer upon engagement. There was also no racially motivated action(s) by any of the officers.
13. Although there were media reports and statements by Mr. Terry and/or friends of Mr. Terry that his wounds required as many as 160 stitches, it is believed that ten (10) or fewer stitches were required.
14. The third officer on the scene did not violate any department general orders during this incident.

PROCEDURE AND POLICY CHANGES TO IMPROVE CANINE USAGE

1. The canine unit which was used in this case was a Chevrolet which has since been modified by installing permanent bars prohibiting a canine from entering the front seat compartment of the vehicle from the rear seat.
2. A rear-door pop-release has been ordered for the Chevrolet canine vehicle and will be installed if Tino returns to duty or another canine is assigned to that unit.
3. Canine officers have been ordered to keep the partitions in their vehicles closed between the front and rear compartments at all times.

FBI REVIEW

As previously reported, the FBI contacted the Mountain View Police Department and requested a copy of the incident reports. We complied with the request and advised the FBI that we would fully cooperate with any investigation. We have been further advised that the FBI has forwarded a report on to the U.S. Department of Justice, which is standard procedure. Although the FBI has not shared the interim results of their investigation with our department, we have no reason to expect their conclusions will differ from ours with respect to the behavior of Mountain View Police Department personnel during this incident. It was also noted that the reason their investigation was closed so quickly, is that neither Mr. Terry nor Ms. Hill would cooperate or be interviewed by the FBI regarding the incident. Our investigation therefore remains open, pending the conclusion of the federal investigatory process.

CANINE PROGRAM BACKGROUND

As previously mentioned, this entire process, while unfortunate, did provide a valuable opportunity to consider our department canine unit and its past service to the community. The Mountain View Police Department pioneered the use of police canines in Northern California when the Department's Canine Program began in 1961. Through the years, technology and technique have changed, however, the significant benefits this program brings to the police and the community remains the same.

The canine team adds a unique and distinctive element to our ability to carry out our police responsibilities to the community. This specialized tool of a highly trained police service canine team adds two important dimensions to the police officer's job performance:

- The most important is the canine's keen sense of smell. Using this attribute to locate lost persons or property, and track or search for criminal suspects or items of evidence is the major advantage of the canine team.
- Secondly, the canine team provides added protection and security to handler officers and other officers who must often search out criminals in dangerous locations, pursue and capture fleeing suspects, or overcome suspects intent on violently resisting arrest.

Department policy is to use, under appropriate circumstances, the inherent abilities of a canine teamed with a highly trained police officer to locate lost persons or property, search for and apprehend criminal suspects, and provide officer protection. This reduces the need for officer resources and at the same time, reduces officer risk. In addition, if selected, canine teams may serve as narcotic detection teams in addition to their normal canine team duties.

Although the Department does not maintain a long-term historical log of canine activities in the field, it is safe to say that for at least the last 12+ years we have not had any similar unauthorized engagement and no engagement which has resulted in litigation.

The Mountain View Police Department currently has three canine teams. Other police agencies in Santa Clara County who use canines in addition to the Mountain View Police Department are Palo Alto, Los Altos, Sunnyvale, Santa Clara, Milpitas, San Jose and the Santa Clara County Sheriff's Department.

DEPARTMENT CONTRACT TRAINER

The department contracts with Mr. Faggiano, of JAFCO, to conduct all canine training. Mr. Faggiano has trained handlers and canines since 1969. He has a broad range of expertise in all areas of canine usage. Mr. Faggiano's training efforts focus on the canine always being under the control of the handler. Mr. Faggiano has been the Mountain View Police Department's contract trainer for the last twenty-nine years. In addition to the Mountain View Police Department, Mr. Faggiano currently trains canines from Milpitas Police, Pleasanton Police, Los Altos and Brentwood Police. Mr. Faggiano is a P.O.S.T. certified instructor for police canine training.

CANINE TRAINING

Canine Officers train four hours weekly. The training covers different areas, including narcotics detection, tracking, searching, apprehension, handler protection, scouting, evidence recovery, etc. Review of this incident includes review of the circumstances surrounding the canine's exit of the patrol vehicle. Canines are trained to leave the vehicles only when commanded by the canine handler. Canines are trained to remain in

the vehicle and are not to exit the vehicle unless commanded to exit, even if the rear door is open or the partition between the front and rear seats is open.

CANINE AS A USE OF FORCE

Canine Officers must comply with the Use of Force General Order (4.1.2) when using the canine as physical force. The use of a canine as physical force constitutes a moderate use of force, as described in the Use of Force General Order. Physical force means a physical contact between a subject and canine, whether or not there is an injury. These circumstances must be reported in accordance with the moderate use of force requirements pursuant to the Department's Use of Force General Order.

It is not considered a use of force where a Canine Officer does not command the canine to respond as physical force, and the dog responds on its own outside of training. In these incidents, the on-duty supervisor will contact the Canine Coordinator. The Canine Coordinator will assess the circumstances and notify the Canine Manager. It will be determined if the canine needs to be immediately removed from duty. The Canine Manager will contact the Field Operations Captain, who in turn will contact the Police Chief. Circumstances will be reviewed and appropriate action taken to address the issue. Department supervisors have been advised of this procedure, which will be added to the Canine Program General Order when it is revised.

CONCLUSIONS

The results of our administrative review confirm that the injury to Mr. Terry was a result of an uncommanded action on the part of our police canine, Tino, and contrary to what has been a very rigorous and thorough training protocol. Additionally, the initial officer on the scene acted appropriately by detaining Mr. Terry and calling for backup. Mr. Terry and friends of Mr. Terry have asserted that as many as 150 to 160 stitches were required to close Mr. Terry's wounds, it appears that the number of stitches which were required were something less than ten (10).

We will move forward with further analysis of our canine program while recognizing the invaluable asset they bring to the community and the contribution they make to officer safety. At no time did any evidence surface which would indicate any of the actions on the part of the officers were taken because of Mr. Terry's race or any other reason outside department policy.

Canine Tino will remain out-of-service until assessed by an independent consultant, with recommendations to be forwarded to me concerning whether or not Tino can return to duty. Canine Tino will continue attending each weekly canine training session with his handler.

NEXT STEPS

Having completed our internal administrative review, we are proceeding to the next step and will engage an independent canine expert to examine our program, with particular emphasis on the September 4th incident. This independent expert will be extremely important in assessing this incident and providing any overall recommendations to improve our canine program. I am looking forward to this external review in helping us ensure the highest level of professionalism for our department.

If you should have any questions, please do not hesitate to contact me about the above.

cc: CA